

GRANT AGREEMENT
BY AND BETWEEN THE BOARD OF SELECTMEN
OF THE TOWN OF HINGHAM, MASSACHUSETTS
AND
HINGHAM COMMUNITY ACCESS AND MEDIA, INC.

This Agreement is made this 15th day of September, 2016, by and between the Board of Selectmen of the Town of Hingham, Massachusetts (hereinafter referred to as the "Town" or "Hingham") and Hingham Community Access and Media, Inc. (hereinafter referred to as "H-CAM"), a private, non-profit corporation duly established under the laws of the Commonwealth of Massachusetts.

RECITALS

WHEREAS, the Town granted a Cable Television Final License to Verizon New England, Inc. (hereinafter also referred to as "Verizon") for a ten (10) year term from April 22, 2008 through April 21, 2018 (hereinafter referred to herein as "Verizon License Agreement") (references to Verizon in this Agreement shall apply to any and all transferees or successors to Verizon), and

WHEREAS, the Town granted a Cable Television Renewal License to Comcast of Massachusetts, I, Inc., (hereinafter also referred to as "Comcast") for a Amended/Restated Term from March 11, 2009 through August 13, 2009 and a ten (10) year renewal term from August 14, 2009 through August 13, 2019 (hereinafter referred to herein as "Comcast License Agreement") (references to Comcast in this Agreement shall apply to any and all transferees or successors to Comcast; the Verizon and Comcast cable licenses shall be referred to collectively herein as the "Cable Licenses");

WHEREAS, the Cable Licenses provide to the Town and its residents certain public, educational, and government ("PEG") Access Channels (sometimes referred to herein as "PEG Access" or "Access"), together with grants for funding and support to the Town and/or its designee for PEG Access operations, facilities and equipment;

WHEREAS, H-CAM has stated its interest in providing Public Educational and Government Access programming, services, facilities and equipment to the Town, its residents, and Hingham institutions (collectively hereinafter also referred to as "Access Users");

WHEREAS, the Town, pursuant to and consistent with its authority as a municipal corporation and a cable franchising/licensing authority under applicable federal and state law, and the provisions of Section 5 of the Verizon Final License and Article 6 of the Comcast Renewal License, enters into this Agreement for the provision by H-CAM of PEG Access programming, services, facilities and equipment to the Town and Access Users, pursuant to the terms of this Agreement, the grants from Verizon and Comcast, and applicable law;

NOW, THEREFORE, in consideration of the mutual promises and covenants set forth herein, the parties agree as follows:

SECTION 1. PURPOSE OF AGREEMENT

The purpose of this Agreement is for the provision of PEG Access programming, services, facilities and equipment pursuant to the terms of this Agreement, the grants from Verizon and Comcast, and applicable law.

SECTION 2. TERM

- A. This Agreement shall be for a five (5) year term, commencing on _____, 2016 and running through _____ 2021, unless earlier terminated as provided herein. This Agreement may be extended by a written instrument signed by the authorized representative(s) of both parties.
- B. H-CAM shall, at least six (6) months prior to the expiration of the five (5) year period referenced in Paragraph (a) above, give the Board of Selectmen written notice of its request to renew this Agreement for an additional term of five (5) years. The Board of Selectmen shall, within sixty days (60) days of receipt of said notice, provide a written response to H-CAM as to whether it is willing to renew this Agreement. If both parties desire to renew this Agreement, the parties shall negotiate in good faith to renew the Agreement on terms agreeable to both parties.

SECTION 3. Scope of Services and H-CAM Obligations

H-CAM shall provide PEG Access programming, services, facilities, and equipment to the Town and to Access Users, as provided in this Agreement, consistent with the grant funds provided to H-CAM pursuant to this Agreement and the reasonable availability of access personnel, contractors and volunteers, and in accordance with applicable law, including, but not limited to, the Internal Revenue Code as applicable to the operation of a Section 501(c)(3) tax exempt organization. The term "Access Users" as used in this Agreement shall mean Hingham residents and persons associated with a Hingham business or organization who have complied with and have successfully completed H-CAM's reasonable requirements for membership and training. All PEG Access programming shall require a Hingham sponsor or sponsors, as determined by the H-CAM Board of Directors. The services, facilities and equipment provided by H-CAM shall be provided to Access Users on a non-discriminatory basis. The PEG access programming, services, facilities and equipment to be provided by H-CAM includes the following responsibilities, consistent with the funds available to H-CAM:

- A. Schedule, program, operate and maintain Hingham's PEG Access Channels;
- B. Provide, facilitate, and encourage the production of programming for the PEG Access Channels, through the operation and maintenance of an Access studio, and other portable/remote equipment.
 - a. Establish rules, procedures and guidelines (including written Access User agreements, which shall be required for all Access Users) for use of the PEG access Channels, facilities and equipment;
 - b. Conduct training programs for Hingham residents and members of Hingham-based organizations in the skills necessary to produce quality Access programming;
 - c. Provide technical assistance to Access Users, using H-CAM staff and volunteers;
 - d. Provide access to production and post-production equipment for Access Users;
 - e. H-CAM shall provide videography services to produce programming for the PEG Access Channels of a technical quality commensurate with other H-CAM programming.

- f. Programming and event coverage shall take into consideration broadcast time availability, community needs, and viewer demographics.
 - g. All persons employed by H-CAM to carry out the obligations under this Supplemental Grant Agreement shall pass a Criminal Offender Record Information (“CORI”) check.
- C. Responsibly manage the annual grant funding provided to and raised by H-CAM, including the funding provided pursuant to Sections 4 and 5 below.
- D. Purchase (and/or lease) operate and maintain PEG Access equipment with funds provided to H-CAM in accordance with this Agreement;
- E. With regards to Educational access on Hingham’s Access channels:
 - a. H-CAM shall designate an individual to fulfil the duties of Educational Access Coordinator (“EAC”) and work with appropriate school community members to cultivate and prepare for broadcasting on the Educational Access Channel original and diverse programming and features.
 - b. H-CAM shall work with the school department to maintain a “RACI Matrix” which outlines contact information and delineates who is responsible, accountable, consulted, & informed (RACI) for each of the activities necessary to the production and broadcast of content on the Educational Access Channel.
 - c. For matters affecting multiple schools, Hingham Public Schools (“HPS”) policies or aligned or associated organizations H-CAM shall work through the superintendent, or his or her designee, as the point of contact.
- F. Create and cablecast programming designed to educate viewers about the Town, Schools, Government Departments, Town Committees, and Community Organizations on the PEG access channels.
 - a. Assist in creating and/or cablecasting of public service announcements;
 - b. Maintain a bulletin board on the PEG Access Channels on which the Town or any Town Department, Board, or Committee or any Hingham community organization may post information;
- G. With regards to Government access on Hingham’s Access channels:

- a. The Town will give H-CAM reasonable notice of meetings it requests to have cablecast through the Board of Selectmen, or its designee. Reasonable notice is defined as five (5) business days.
 - i. If a request to film and cablecast a meeting is made upon less than five (5) business days notice, H-CAM will use its best efforts to fulfil the request based upon available resources.
 - ii. The Board of Selectmen or its designee has the right to establish priority with respect to cablecasting of government meetings.
 - iii. H-CAM shall comply with any lawful rules and reasonable requirements of the respective government body with respect to the camera and sound coverage of a meeting.
 - iv. Nothing contained in this subsection is intended to interfere with the rights of any person to videotape a government meeting pursuant to the Open Meeting Law;
- b. Each Committee or Board (other than the Board of Selectmen) that requests H-CAM coverage of its meeting shall provide H-CAM with the name and contact information for a contact person to coordinate the setup of the meeting. The Committee or Board shall also designate a moderator on the Committee or Board to coordinate with H-CAM during the meeting in order to facilitate effective video and audio coverage of the meeting by H-CAM.
- c. Upon timely request of the Board of Selectmen or its designee, H-CAM will provide at no cost to the Town a DVD (or other appropriate media) copy of a government meeting previously cablecast by H-CAM, to the extent possible;
- H. Accomplish such other tasks relating to the operation, scheduling, and/or management of the PEG Access Channels, facilities and equipment as H-CAM may consider appropriate and necessary;
- I. Take any other actions necessary to carry out the obligations with respect to PEG Access that are set out in Section 6.2 of the Comcast License Agreement with the Town.
- J. Comply with applicable laws and regulations with respect to all programming on the PEG Access Channels.

SECTION 4. FUNDING FOR PEG ACCESS

- A. In order to fulfill its obligations pursuant to Section 3 above, the Town shall provide to H-CAM funding for annual support for Public Access operations an amount equal to ninety five percent (95%) of the grant funding for operations provided to the Town by Comcast for PEG Access Support pursuant to Section 6.4 of the 2009 Comcast License Agreement with the Town and provided to the Town by Verizon for PEG Access Support pursuant to Section 5.4 of the 2008 Verizon License Agreement with the Town (or comparable provisions in succeeding license agreements), beginning with the payments for the first quarter of the 2017 fiscal year made by Comcast and Verizon.
- B. PEG Access Support payments to H-CAM shall be made on a quarterly basis, within 30 days after receipt by the Town of each PEG Access Support payment from Comcast or Verizon.
- C. Within ninety (90) days following the end of each fiscal year of the Town, beginning with fiscal year 2017, the Town shall provide H-CAM with any PEG Access Support payments made by Comcast pursuant to Section 6.4 of the 2009 Comcast License Agreement with the Town and made by Verizon pursuant to Section 5.4 of the 2008 Verizon License Agreement with the Town (or comparable provisions in succeeding license agreements) that were not expended or committed for expenditure by the Town during the fiscal year.
- D. No later than December 31 of each year, H-CAM shall provide the Board of Selectmen and the Cable TV Advisory Committee a capital improvement plan for the following fiscal year. This "Plan" shall include the estimated cost of each item on the Plan.
- E. No later than June 30th of each year, the Town shall notify H-CAM of the items on the plan that are approved for the fiscal year beginning July 1.
- F. No later than 30 days after the start of the fiscal year the town shall pay H-CAM, out of the cable accounts, the total amount of money needed to cover the approved items on the Plan for that fiscal year.
- G. If other capital needs arise during the fiscal year that could not have been anticipated at the time the Plan was submitted and that cannot wait until the following fiscal year to be addressed, the Town Administrator, or his or her designee, shall have the authority to approve additional capital expenditures from the cable accounts in amounts not to exceed

ten thousand dollars (\$10,000) each. Additional expenditure exceeding \$10,000 will require approval of the Board of Selectmen.

- H. H-CAM shall be responsible for the maintenance, repair, and replacement of all facilities and equipment purchased by H-CAM or provided to H-CAM pursuant to this Section.
- I. If requested by the Town, H-CAM shall within a reasonable time not to exceed 45 days provide an inventory of all equipment acquired and/or owned by H-CAM.
- J. Upon the written request of H-CAM to the Town, the parties hereto shall negotiate in good faith additional funding requests from H-CAM. To this end, H-CAM shall provide to the Town written documentation enumerating and supporting additional requests.
- K. To the extent that H-CAM provides services not covered by this agreement for the PEG Access Channels, the Town will reimburse H-CAM for the cost of providing those services. The Town and H-CAM agree to negotiate in good faith to agree upon the cost of such additional services provided by H-CAM to the PEG Access Channels.
- L. To secure all of its obligations under this Agreement in the event of dissolution or termination of this Agreement, H-CAM hereby grants the Town a security interest in all equipment or property (real or personal) purchased with funding provided pursuant to this Agreement or prior agreements between the Town and H-CAM. H-CAM agrees to take all steps reasonably requested by the Town to perfect and enforce the Town's security interest, including the execution and processing of financing statements and continuation statements under the Uniform Commercial Code. The Town may, in the discretion of the Board of Selectmen, subordinate its interest in said equipment or property, if necessary, to finance the purchase of equipment or property. Such subordination, if made by the Board of Selectmen, shall only be with respect to the specific equipment or property that H-CAM might wish to finance. A determination by the Town not to invoke its rights to security interests pursuant to this Agreement shall not affect the obligation of H-CAM to return the subject equipment and funds to the Town (or its designee) pursuant to Section 4(N) below. To further secure its obligations pursuant to this Agreement as described above, H-CAM shall take such reasonable actions as requested by the Board of Selectmen or its designee with respect to any funds provided to H-CAM by the Town and which have not as of that time been expended by

H-CAM, including, but not limited to, listing the Town as a beneficiary on any such account holding such funding.

- M. All equipment and property provided to H-CAM by the Town and purchased by H-CAM with grant funds provided by the Town shall at all times remain under the exclusive control of H-CAM, which shall have the right to determine appropriate rules, procedures, and guidelines for the use of said equipment and to amend those rules, procedures, and guidelines from time to time. H-CAM shall provide the Town with a copy of those rules, procedures, and guidelines and any amendments thereto.
- N. In the event of dissolution of H-CAM, all equipment and property provided to H-CAM by the Town and purchased by H-CAM with funds provided by the Town shall become the property of the Town and/or its designee.

SECTION 5. FUNDING FROM OTHER SOURCES

Nothing in this Agreement shall prohibit H-CAM from obtaining funding from other sources in a lawful manner, including, but not limited to, fundraising activities and/or sponsorships.

SECTION 7. COMPLIANCE WITH LAWS AND REGULATIONS

H-CAM shall be governed by, operated in accordance with, and comply with all applicable state and federal laws and regulations.

SECTION 8. PROVIDING REASONABLE ACCESS TO ACCESS USERS

H-CAM shall develop and enforce policies and procedures which promote local use of the PEG Access channels and make programming accessible to residents and other PEG Access programming viewers, consistent with such programming guidelines, policies, and rules, including safe harbor provisions, as are appropriate to provide for and promote the use of PEG Access Channels, equipment and facilities, subject to and in accordance with applicable law. In furtherance hereof, the Town acknowledges that H-CAM may require Access program producers to assume individual responsibility for any program-based liability, subject to the Massachusetts Cable Act, Federal Communications Commission requirements, or other applicable law. The parties acknowledge that H-CAM is not ordinarily intended to engage in pre-screening of

programming; the Public Access Channel is in the nature of a conduit for third party programming, and H-CAM is not itself responsible for the content of programming of individual members of the public or for the content of third-party producers. To further the adoption of reasonable programming policies and rules, H-CAM reserves such rights as are permitted, subject to applicable law, to adopt and implement lawful guidelines and policies to implement the foregoing, including but not limited to guidelines prohibiting obscenity, copyright violation, and other forms of unprotected speech, all subject to due process if and to the extent applicable to a private access corporation, and H-CAM may adopt guidelines and policies allowing lawful scheduling practices, disclaimers, disclosures, user forms and user agreements, and allowing adoption of other lawful program-related guidelines, subject to applicable law. H-CAM may produce its own programming subject to availability of resources.

SECTION 9. NON-COMMERCIAL PROGRAMMING

- A. All PEG Access programming cablecast by H-CAM shall be non-commercial.
- B. Nothing in the Agreement shall prohibit H-CAM from including an appropriate underwriting acknowledgment before or after a Public (but not Government or Educational) Access program, to the extent otherwise not prohibited by applicable law and or the terms of a cable license.
- C. H-CAM may charge a reasonable fee for the following services:
 - a. services customarily provided to Access Users by an access corporation for a fee;
 - b. services customarily provided to third parties for a fee, including tape dubbing (i.e. the provision of videotapes/DVDs of particular access programs), to the extent otherwise not prohibited by applicable law, except where H-CAM has agreed to provide such services to the Town without a fee as set forth in Section 3(G)c;
 - c. Sponsorship fees; and
 - d. Membership fee(s).

SECTION 10. COPYRIGHT CLEARANCE

H-CAM shall require the respective Access User to obtain all talent and location releases as appropriate, all rights to all material cablecast and clearances from broadcast stations,

networks, sponsors, music licensing organizations' representatives, and without limitation of the foregoing, from any and all other person(s) as may be necessary to transmit its or their program material over the PEG access Channel in a lawful manner. Access Users shall further identify themselves as responsible for all opinions, statements and other representations made during their program. H-CAM will refer all communications from viewers directly to the named producer of that program.

SECTION 11. INDEPENDENT CONTRACTOR

It is understood and agreed that H-CAM is an independent contractor and that no relationship of principal/agent or employer/employee exists between the Town and H-CAM. If in the performance of this Agreement any third persons are employed by H-CAM, such persons shall be entirely and exclusively under the control, direction and supervision of H-CAM. All terms of employment, including hours, wages, working conditions, discipline, hiring and discharging or any other term of employment shall be determined by H-CAM, and the Town shall have no right or authority over such persons or terms of employment. Notwithstanding varying degrees of Town direction with respect to certain matters herein, it is the intention of the Town that H-CAM be and act as a private corporation, and not as a department of the Town or as a governmental or public body, and that H-CAM therefore shall be overall responsible for the independent implementation and direction of the obligations it undertakes herein, subject to the ultimate control of H-CAM's Board of Directors. In furtherance of the foregoing, the Town acknowledges that notwithstanding its ability to allocate certain cable license grant revenues to H-CAM, H-CAM's Board of Directors shall retain control over the final expenditure decisions with respect to the grant funds it receives in accordance herewith. To further fulfill the Town's intention that H-CAM be and operate as a private corporation and not as a public body, the parties acknowledge that H-CAM agrees to exercise diligent efforts to ensure that a majority of successor Boards of Directors shall be elected by the members of H-CAM. Directors appointed by the Town shall serve as liaisons to the Town. All Directors, however appointed or elected, are fiduciaries of H-CAM.

SECTION 12. RECORDS AND AUDIT

- A. H-CAM shall maintain all necessary books and records in accordance with generally accepted accounting principles. Additionally, H-CAM shall:
- a. implement effective internal financial and operating controls for the efficient use of all grant funds and other resources provided pursuant to this Agreement;
 - b. maintain all necessary books and records, in accordance with generally accepted accounting principles;
 - c. have a year-end fiscal audit or review, prepared by an independent certified public accountant. A fiscal audit (rather than a review) shall be performed if: (a) required by applicable law or regulation, or (b) if requested in writing by the Board of Selectmen no later the end of the fiscal year. The fiscal review may, in limited circumstances, be performed by a person who is not a certified public accountant if authorized in writing by the Board of Selectmen; which authorization the Board may in its sole discretion deny.
 - d. make timely payment as due to persons and entities supplying labor, materials or services to H-CAM for any purpose under this Agreement; and
 - e. maintain generally accepted business and accounting practices with respect to its operations and investments, financial oversight and management;
- B. Upon request of the Board of Selectmen or its designee, H-CAM shall, at a reasonable time(s) during normal business hours, make available any or all of its records with respect to matters involving H-CAM's performance of its obligations under this Agreement. H-CAM shall not be required to make available pursuant to this paragraph records disclosing personal, proprietary, or confidential information about private citizen producers or records pertaining to program content and program-related activities of private citizens, except as may be required by applicable law or court order.
- C. The Town shall, at its cost, have the right to have the financial books and records of H-CAM reviewed by a qualified individual or firm. Nothing herein shall be deemed to diminish the responsibility of H-CAM, if any, under applicable law or regulation, with respect to any financial record keeping or financial statement and/or audit requirements. Copies of any financial records, statements or audits shall be provided to the Town upon request of the Board of Selectmen.

- D. All capital equipment (including furniture) obtained by H-CAM will be inventoried and permanently marked, and an inventory, including invoice numbers, maintained and updated.

SECTION 13. REPORTS TO THE BOARD OF SELECTMEN

- A. On an annual basis, and within thirty (30) days of filing its Annual Report (Form PC) to the Massachusetts Attorney General's Office, H-CAM shall provide a written report to the Board of Selectmen, which Report shall include the following:
- a. A copy of H-CAM's Annual Report (Form PC) filed with the Attorney General's Office;
 - b. Year-end financial statements;
 - c. Previous year's budget and actual expenditures summaries;
 - d. Upcoming year's budget;
 - e. Five Year Budget Plan;
 - f. Hours of Public, Educational, Governmental Access programming and cablecast by categories.
 - g. Training classes offered and attendance figures;
 - h. H-CAM Policies and Procedures, with any changes from the previous year highlighted;
 - i. Summary of programming and services provided;
 - j. List of future goals;
 - k. Current and complete listing of H-CAM's Board of Directors;
 - l. A complete current inventory of all equipment; and
 - m. Any other documentation and/or information mutually agreed upon by the parties hereto.
- B. If requested by the Board of Selectmen, between fifteen (15) and forty-five (45) days after the Board of Selectmen has received H-CAM's Report to the Board of Selectmen, H-CAM shall meet with the Board of Selectmen or its designee(s), for the purpose of reviewing H-CAM's operations, budget, programming and information contained in the Report to the Board of Selectmen for the previous year.

- C. H-CAM shall provide the following information to the Board of Selectmen on a quarterly basis:
 - a. H-CAM's Treasurer's Reports; and
 - b. Meeting minutes for all regular meetings of H-CAM's Board of Directors.
- D. Within thirty (30) days of filing, H-CAM shall provide a copy to the Board of Selectmen of all filings with the State and federal government, including, but not limited to, Change of Directors and/or Officers, instruments of restatement of articles of incorporation, by-laws, dissolution, and other corporate filings.
- E. H-CAM shall cooperate fully and in good faith in answering questions from the Board of Selectmen regarding reporting required under this section.

SECTION 14. ADDITIONAL MEETINGS

- A. If requested by the Board of Selectmen, H-CAM shall meet with the Board of Selectmen and/or its designee annually to provide an update. The purpose of said meeting shall include reviewing H-CAM's compliance with the terms and conditions of this Agreement, and questions, comments and/or suggestions from the Board of Selectmen, other Town officials and personnel, and the public.
- B. H-CAM shall cooperate with the Board of Selectmen or its designee, and shall produce, at its cost, such documents or other materials relevant to such review and evaluation as are reasonably requested by the Town.
- C. H-CAM shall provide notice of all such update meetings by periodic messages on the Public Access channel.
- D. Nothing in this Section shall prohibit the Town from requesting that H-CAM attend other meetings or hearings, or compelling the attendance by H-CAM through any lawful means.

SECTION 15. PERFORMANCE REVIEW BY THIRD PARTY

No more than once during each five-year term of this agreement the Town may engage a person or entity knowledgeable and experienced in access operation in the Commonwealth of Massachusetts to conduct a performance review H-CAM's operation. The cost of this review shall be borne by H-CAM. Upon completion, the town shall submit a copy of the performance

review to H-CAM and schedule a meeting with H-CAM's board of directors to discuss the review.

SECTION 16. INDEMNIFICATION OF TOWN BY H-CAM

H-CAM shall indemnify, defend, and hold harmless the Town, its officials, employees, volunteers and agents from and against any and all claims, suits, actions, causes of action, losses, damages, or liabilities of any kind, nature or description, including, payment of all attorneys' fees and litigation costs and expenses, brought by any person or persons for or on account of any loss, damage or injury to person, property or any other interest, tangible or intangible, or death sustained by or accruing to any person or persons, howsoever the same may be caused, directly or indirectly or arising or resulting from any alleged act(s) or omission(s) of H-CAM, its officers, employees, volunteers, agents or subcontractors or arising from or in connection with any claims, loss or damage to person or property arising out of the failure to comply with any applicable laws, rules, regulations or other requirements or orders of local, state or federal authorities, for claims of libel, slander, invasion of privacy, or infringement of common law or statutory copyright, or for breach of contract or other injury or damage in law or at equity which claims, directly or indirectly, result from H-CAM's use of channels, funds, equipment, facilities or staff granted under or obtained pursuant to the funding from this Agreement. As to any matter arising under this indemnity provision, the Town reserves the right, but not the duty, to select counsel of its choice to represent its interests. This indemnification requirement shall survive the termination or expiration of this Agreement.

SECTION 17. INSURANCE

H-CAM shall, unless otherwise directed in writing by the Town, obtain and maintain in full force and effect at all times during the term of this Agreement all insurance required below by this Section.

- A. *Commercial General Liability Insurance* - Commercial general liability insurance policy, including protective liability, completed operations and broad form contractual liability, property damage and personal injury coverage, with a minimum coverage limit of One Million Dollars (\$1,000,000) per person and per occurrence, Two Million Dollars

(\$2,000,000) aggregate. Said policy shall also include tenant legal liability for property damage, if requested by the Town.

- B. *Motor Vehicle Liability Insurance* - Automobile liability insurance for owned, leased or rented motor vehicles in the amount of Five Hundred Thousand Dollars combined single limit.
- C. *Excess/Umbrella Liability Insurance* - In the minimum amount of One Million Dollars (\$1,000,000) over the insurance required by Subparagraphs (a) and (b) above.
- D. *Business Personal Property Insurance* - Business personal property insurance for facilities and equipment in the amount of replacement cost.
- E. *Workers' Compensation* - Workers Compensation in the minimum amount of the statutory limit if and when H-CAM has an employee.
- F. *Cablecaster's Errors and Omission Insurance* - H-CAM shall obtain errors and omission insurance to cover the content of productions which are cablecast on the PEG Access Channels to include, at minimum, the following areas: libel and slander; copyright or trademark infringement; infliction of emotional distress, invasion of privacy; plagiarism; misuse of musical or literary materials. This policy shall not be required to cover individual Access producers. The minimum amount of said insurance shall be One Million Dollars (\$1,000,000).
- G. The following conditions shall apply to the insurance policies referenced above:
 - a. The Town shall be named as an additional insured on all aforementioned insurance coverages to the extent allowed by law, other than the workers' compensation policy. The policies shall provide that no cancellation, material change in coverage or expiration may be affected by the insurance company or H-CAM without first giving the Town thirty (30) days written notice prior to the effective date of such cancellation or change in coverage;
 - b. All liability insurance shall be written on an "occurrence basis".
 - c. Such insurance shall be primary with respect to any insurance or self-insurance maintained by the Town and shall not call on the Town's insurance for contributions;
 - d. Such insurance shall be obtained from producers authorized to transact insurance business in the Commonwealth of Massachusetts and, unless otherwise agreed to

in writing by the Town, shall be provided by an insurance carrier(s) licensed to do business for the coverage provided in the Commonwealth of Massachusetts by the Massachusetts Division of Insurance;

- e. The coverage amounts set forth above may be met by a combination of underlying and excess/umbrella policies so long as in combination the limits equal or exceed those required herein and follow the same form;
- f. The cost of such insurance, including all premiums and deductibles, shall be borne by H-CAM;
- g. The parties shall periodically review the insurance coverage and coverage amounts required above to determine whether said insurance adequately protects the parties and is cost effective given available funding pursuant to this Agreement;
- h. The failure of H-CAM to maintain the insurance required herein shall be grounds for the Town to suspend this Agreement, subject to the procedures provided in Section 20 below, subject to an abbreviated cure period as reasonably directed by the Board of Selectmen; provided, however, that if any insurance maintained by H-CAM is terminated through no fault of H-CAM, then H-CAM shall have thirty (30) days to obtain replacement insurance that complies with this Agreement or any amendment thereto before the Town may suspend or terminate this Agreement; and
- i. If the Town's own minimum coverage amount for any of the insurance referenced above is higher than that required herein of H-CAM or otherwise increases, the Board of Selectmen may require H-CAM to increase its corresponding insurance coverage within twelve (12) months of written notification by the Board of Selectmen to H-CAM, unless such increased insurance coverage is commercially unavailable or available only at an unreasonable cost to H-CAM.
- j. Directors' and Officers' Liability Insurance - H-CAM shall obtain directors' and officers' liability insurance for its directors and officers.

SECTION 18. ASSIGNMENT AND TRANSFER

Neither this Agreement nor any interest or responsibility herein shall be assigned or transferred by H-CAM, except as expressly authorized in writing by the Town through its Board of Selectmen.

SECTION 19. TERMINATION OF AGREEMENT

- A. The Town, through its Board of Selectmen, shall have the right upon thirty (30) days written notice to H-CAM to terminate this Agreement for:
 - a. Malfeasance, misfeasance, misappropriation or waste of funds provided pursuant to this Agreement;
 - b. Loss of (or failure to obtain in a reasonable time) 501(c)(3) status by H-CAM;
 - c. The loss of a substantial portion of PEG Access funding as a result of a change in the financial terms of a cable license, a change in the status of a cable service provider or a change in law rendering this Agreement substantially inconsistent with the intention of the parties; or
 - d. For any material breach of a material provision of this Agreement by H-CAM as further described in this Section 20 below.
- B. H-CAM may avoid termination by curing any such breach within sixty (60) days of written notification or such longer time as the Board of Selectmen determines. Upon a third (3rd) material breach by H-CAM over the course of a twenty-four (24) month period, the Town may terminate the Agreement upon written notice provided without any cure period as long as said notice is provided within ninety (90) days after the material breach (each day a material breach continues shall be deemed to be an actionable day for purposes of this requirement to terminate within said 90-day period).
- C. H-CAM shall have the right upon sixty (60) days written notice to the Town to terminate this Agreement for material breach of any material provision of this Agreement by the Town. The Town may avoid termination by curing any such breach within said sixty (60) day period.
- D. All written notices of termination shall include a reasonably detailed description of the alleged breach.

SECTION 20. MISCELLANEOUS PROVISIONS

Section 20.1 Entire Agreement

This instrument contains the entire agreement between the parties, which supersedes all prior agreement or proposals except as specifically incorporated herein, and cannot be changed orally but only by a written instrument executed by the parties.

Section 20.2 Cooperation

Each party agrees to cooperate with the other party to carry out the provisions of this Agreement.

Section 20.3 Captions

The captions to sections throughout this Agreement are intended solely to facilitate reading and reference to the sections and provisions of the Agreement. Such captions shall not affect the meaning or interpretation of the Agreement.

Section 20.4 Liability of Town Officials and Employees

To the fullest extent permitted by law, no official, employee, agent or representative of the Town shall be individually or personally liable on or for any obligation of the Town under this Agreement.

Section 20.5 Warranties

H-CAM warrants, represents and acknowledges that as of the date of execution of this Agreement:

- A. H-CAM is a duly organized, validly existing and in good standing non-profit corporation under the laws of the Commonwealth of Massachusetts and has approval from the Internal Revenue Service as a 501(c)(3) charitable corporation.
- B. H-CAM has the requisite power and authority under applicable law and its articles of incorporation and by-laws, is authorized by resolutions of its Board of Directors, and has secured all consents which are required to be obtained as of the date of execution of this Access Agreement, to enter into and legally bind H-CAM to this Agreement, and to take all actions necessary to perform all of its obligations pursuant to this Agreement;
- C. This Access Agreement is enforceable against H-CAM in accordance with the provisions herein; and

- D. There is no action or proceeding pending or threatened against H-CAM which would interfere with its performance of this Access Agreement.

Section 20.6 Force Majeure

If by reason of Force Majeure either party is unable in whole or in part to carry out its obligations hereunder, said party shall not be deemed in violation or default during the continuance of such inability, provided the party takes immediate and diligent steps to comply as soon as possible under the circumstance with this Agreement without endangering the health or safety of persons or property. The term "Force Majeure" as used herein shall include, but not be limited to, the following: acts of God; acts of public enemies; orders of any kind of the government of the United States of America or of the State or any of their departments, agencies, political subdivision, or officials, or any civil or military authority, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, hurricanes, volcanic activity, storms, floods, washouts, civil disturbances, explosions, strikes, and unavailability of essential equipment, service or materials, or other matters beyond the reasonable control of the party. In the event that any such delay in performance or failure to perform affects only part of the party's capacity to perform, the Licensee shall perform to the maximum extent it is able to do so in as expeditious a manner as possible. The party subject to Force Majeure shall upon learning of the Force Majeure occurrence covered by this Section which affects or will affect its performance under this Agreement, promptly notify the other party in writing of said claimed occurrence.

Section 20.7 Non-Waiver

Failure of either party to insist on strict performance of any portion of this Agreement or to exercise its rights or remedies hereunder upon the failure of performance or default of the other party, shall not be considered a waiver of the right to insist upon or to enforce any provision of this Agreement or to exercise any right or remedy occurring as a result of any future failure of performance or default.

Section 20.8 Severability

- A. If any non-material section, sentence, paragraph, term or provision of this Agreement is determined to be illegal, invalid, unenforceable or unconstitutional or is otherwise void,

by any court of competent jurisdiction or other entity with similar legal authority, such determination shall have no effect on the validity of any other section, sentence, paragraph, term or provision hereof, all of which shall remain in full force and effect for the term of the Agreement.

- B. In the event that a material section, sentence, paragraph, term or provision of this Agreement is determined to be illegal, invalid, unenforceable or unconstitutional or is otherwise void, by any court of competent jurisdiction or other entity with similar legal authority, the parties agree to immediately enter into negotiations in good faith and make equitable amendments to restore the relative burdens and benefits of this Access Agreement. Notwithstanding the foregoing, if a party believes a provision is not material, it must so notify the other party within thirty (30) days of a request by such other party that it enter into negotiations to make amendments, or else the claim of non-materiality is waived. The obligation to negotiate is not tolled by, and the parties must discharge their negotiation responsibility notwithstanding, a dispute as to materiality. The remedies provided for herein do not prevent a party from contending that a particular provision is enforceable, or foreclose any remedies if a provision is enforceable.

Section 20.9 Applicable Law

This Agreement shall be interpreted and enforced under the laws of the Commonwealth of Massachusetts.

Section 20.10 Jurisdiction and Venue

Jurisdiction and venue of any legal action arising from this Access Agreement shall be in the Superior Court in Plymouth, Massachusetts. If no subject matter jurisdiction exists in the Superior Court, the legal action shall be brought in the District Court in Hingham. The parties by this Access Agreement subject themselves to the personal jurisdiction of said courts for all purposes, including the entry of judgment and for the resolution of any dispute, action or suit.

Section 20.11 Notice

Official notice shall be in writing, and delivered or sent by certified mail - return receipt requested or express mail - signature required. Delivery shall be equivalent to direct personal

notice, direction or order, and shall be deemed to have been given at the time of delivery. Certified mail shall be deemed to have been given two (2) days after mailing and express mail shall be deemed to have been given the day after mailing. Notice shall be addressed as provided below or such other name, title and/or address as hereinafter provided in writing by the respective party:

**TOWN OF HINGHAM
MEDIA, INC**

Board of Selectmen
Hingham Town Hall
210 Central Street
Hingham, Massachusetts 02043-2759

HINGHAM COMMUNITY ACCESS AND

35 Pond Park, Suite 8
Hingham, Massachusetts 02043

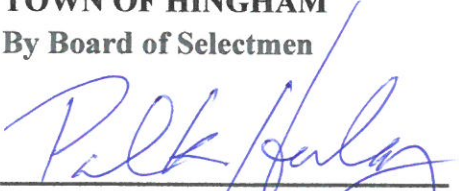
with a copy to: the Town Administrator at the same address

Section 20.12 Amendment

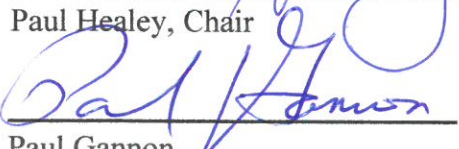
Amendments to this Agreement shall be mutually agreed to and in writing executed by the Board of Directors of H-CAM and the Board of Selectmen for the Town.

IN WITNESS WHEREOF, the parties have executed this Agreement as a sealed instrument as of the date first written above.


**TOWN OF HINGHAM
By Board of Selectmen**



Paul Healey, Chair



Paul Gannon



Mary Power

**HINGHAM COMMUNITY ACCESS
AND MEDIA, INC.**

By its President
(as authorized by a vote of its Board of Directors)

James Dellot, President

Approved as to legal form:
